IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE RAJENDRA KUMAR VANI

ON THE 30th OF JANUARY, 2026

CRIMINAL APPEAL No. 1037 of 2026

SURESH

Versus

SANJAY

Appearance:

Shri Vaibhav Dharpure - Advocate on behalf of Jaideep Sirpurkar - Advocate for the appellant.

None for the respondent.

JUDGMENT

This appeal under Section 378 (4) of Cr.P.C. has been filed by the appellant - Suresh (hereinafter referred to as the '**Complainant**') assailing the judgment and order of acquittal dated 11.10.2012 passed in Criminal Appeal No.40/2012 (Sanjay Vs. Suresh) by learned Additional Sessions Judge, District Betul (M.P.) whereby the lower appellate court allowing the appeal has set aside the judgment of conviction and order of sentence dated 26.03.2012 passed by the learned JMFC, Betul in Criminal Appeal No.5072/2006 whereby the respondent- Sanjay (hereinafter referred to as the '**accused**') was convicted under Section 138 of the Negotiable Instruments Act and sentenced to undergo R.I. for six months and fine of Rs.80,000/-, in default of payment of fine, further imprisonment of two months.

2. The facts in brief are that the complainant filed a private complaint against the accused before the trial court on 04-11-2006, stating that the

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accused, out of friendship and cordial relations, had borrowed Rs.80,000/- from him. On demand for the money, the accused gave him a cheque of the same amount dated 14-09-2006 drawn on the State Bank of Indore, Multai branch. When the complainant deposited the cheque with the Bank of Maharashtra, Betul, for its payment, the cheque was dishonoured on 26-09-2006 due to insufficient funds in the accused's account. The complainant sent a notice to the accused through his lawyer by registered post on 30-09-2006, and requesting payment of the amount. However, the accused did not pay the cheque amount even after receiving it. The complainant prayed that the accused be convicted and punished for the offence punishable under Section 138 of the Negotiable Instruments Act and that he be awarded double the amount of the cheque along with interest thereon and the cost.

3. The trial court, after preliminary inquiry, considered there to be sufficient grounds for further proceedings against the accused for the offence punishable under Section 138 of the Negotiable Instruments Act, took cognizance of the offence and registered a criminal case, summoned the appellant to appear. But when the details of the crime were explained to him, the accused denied committing the crime and sought a judicial trial. The accused presented his defence before the trial court that he had taken Rs.10,000/- from the complainant in the year 2003 and by the year 2006 he had returned Rs.2,00,000/- along with interest by paying Rs.1000/- each time. As security for this amount, he had signed a blank cheque and given it to the complainant. He did not take Rs.80,000/- from the complainant, he did not give the disputed cheque for the payment of this amount and he did not

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receive any notice from the complainant. The accused did not present any evidence in his defence, declaring himself innocent.

4. The learned trial Court on the basis of material produced on record by the parties vide judgment dated 26.03.2012 held the accused guilty for commission of offence under Section 138 of the N.I. Act and sentenced to undergo R.I. for six months and fine of Rs.80,000/-, in default of payment of fine, further imprisonment of two months.

5. Being aggrieved and dissatisfied with the aforesaid judgment of conviction recorded by the learned trial court, the accused preferred an appeal before the lower appellate Court. The learned lower appellate Court while allowing the appeal has set aside the judgment of conviction and order of sentence passed by the learned Trial Court and eventually acquitted the accused of the offence under Section 138 of the N.I. Act. Hence the present appeal has been filed by the complainant on various grounds.

6. It is submitted by the learned counsel for the appellant/complainant that the learned Trial Court on appreciation of the evidence on record has rightly convicted the accused/respondent-Sanjay but the learned lower appellate court on the erroneous findings has acquitted the accused/respondent-Sanjay. The complainant has adduced the evidence in order to establish the fact that a loan of Rs.80,000/- was given by the complainant to accused and accused in response had given a cheque which is a subject matter of the complaint. It is also submitted that the notice has been given only when the cheque got dishonoured and that has been sent at the correct address of the accused. In this regard, the postal receipts and a letter sent to the post office enquiring

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the service report has been filed. Therefore, it was established that the notice has been received by the accused but the learned lower appellate Court has erred in not finding the fact of service of notice as proved. Thus, it is prayed that while allowing the appeal, impugned judgment of acquittal passed by the learned lower appellate court be set aside and the judgment of conviction and order of sentence passed by the learned Trial Court be restored.

7. Heard learned counsel for the appellant/complainant and perused the record meticulously.

8. The learned lower appellate court has passed the order of acquittal in favour of accused on two grounds. First ground is that the notice about the dishonour of cheque and for payment of amount in question has not been given to the accused at his correct address and it has not been received by the accused. Secondly, the complainant could not prove that wherefrom he had arranged the money, which was purportedly given by him to the accused as loan.

9. It is stated by the complainant in his chief examination in the form of affidavit that he has given Rs.80,000/- to the accused to support the business of polythene as a loan but he has not stated even in his complaint or in his chief examination when such amount has been given by him to the accused. He has stated that the aforesaid cheque has been given by the accused on 14.09.2006. In further re-examination he has exhibited this cheque as Ex.P/1. In para 11 of his cross-examination, he has stated that he had given the money in cash at his shop but the transaction was not reduced in writing. Further in para 12 he has stated that on 02.09.2006 he had given this amount

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to the accused but that did not find place in the complaint as well as in the chief examination. Had the complainant given money to the accused on 02.09.2006 and if the cheque was given by him not before 14.09.2006, why at the time of lending the money, as a matter of general practice the transaction was not reduced in writing, is not clarified by the complainant.

10. The complainant (PW-1) has stated in cross-examination that he had lent the aforesaid money because he was doing business of readymade clothes. However, when he was cross-examined further on the point of income from the business, he changed his version in para 12 of his statement that he had taken money from two to four persons and thereafter gave it to accused. He admits in this para that he was not able to lend this money to accused at his own, therefore, he had taken the money from two to four persons. He has not disclosed the names of those two/four persons from whom he had taken the money for lending it to accused. That apart, it also indicates that he is not certain as to whether the persons from whom he had taken the money were two or four in number. In this regard, the statement of this witness does not inspire confidence of the Court.

11. The accused in his examination under Section 313 of CrP.C. has stated that in the year 2003 he had taken Rs.10,000/- from the complainant and till 2006 he had re-paid Rs.1000/- at various intervals. This statement cannot be accepted as an admission on behalf of accused of such lending of money to accused by complainant on 02.09.2006.

12. As far as the notice to accused is concerned, in para 10 of his cross-examination the complainant has stated that accused Sanjay is resident of

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Multai while in the complaint as well in the notice Ex.P/4, the address of the accused Sanjay has been stated as Government Saraswati School Campus, Adlak Mohalla, Amla, Tehsil Amla, District Betul. Thus, certainly the notice Ex.P/4 has not been sent at the correct address of accused at Multai. This fact is further supported by the admission of the complainant in para 14 of his cross examination that neither the notice was given by him nor it bears his signatures, rather the notice was given by his advocate which bears the signatures of his advocate. However, the advocate of the complainant has not been produced in defence to establish the fact that he has sent notice to accused and Ex.P/4 bears his signature. It is stated in affidavit of chief examination that the notice was also sent by Madhur Courier in addition to sending it by registered post but such fact did not find place in the original complaint and if the notice had been sent additionally by Madhur Courier service then any receipt/document in this regard must have been adduced by the complainant but despite being important piece of evidence, such receipt/document has not been adduced by the complainant nor any explanation of such omission has been disclosed by the complainant.

13. As per the statement of complainant when registered A.D. has not been received by him, he filed a letter Ex.P/6 to the concerned post office seeking information about service of registered post but here again Ex.P/6 did not contain any signature of the complainant. Complainant in para 18 of his cross-examination has admitted this fact. The perusal of Ex.P/6 reveals that there is no signature over this application as applicant. There seems to be a name of the advocate at the end of the application but the name has been

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stated as *Registrykarta*. It does not seem to be a signature of applicant.

14. The complainant (PW-1) in his cross-examination has admitted that he cannot say that the notice has been received by the addressee or not. He also admits that the address of the accused did not contain any house number and the age of the accused. The factum of service of notice could have been proved by the complainant by producing information sought from the concerned post office or by adducing any employee or officer of the post officer in evidence in respect of service of notice at the accused but the omission in this regard is revealed from the record.

15. In the case of **State of Gujarat v. Jayrajbhai Punjabhai Varu, (2016) 14 SCC 151** the Hon'ble Apex Court has held that prosecution has to prove the guilt of the accused beyond all reasonable doubt. It is also the rule of justice in criminal law that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other towards his innocence, the view which is favourable to the accused should be adopted. In case of **Nikhil Chandra Mondal v. State of W.B., (2023) 6 SCC 605** Hon'ble Apex Court has observed that it is a settled principle of law that however strong a suspicion may be, it cannot take place of a proof beyond reasonable doubt. Unless finding of the trial Court is found to be perverse or illegal/impossible, it is not permissible for the appellate Court to interfere with the same.

16. Recently in case of **Mallappa & others v. State of Karnataka, (2024) 3 SCC 544** the Hon'ble Apex Court has again summarized the principles while deciding the appeal against acquittal which are as follows :-

> *"42. Our criminal jurisprudence is essentially based on the promise that no*

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innocent shall be condemned as guilty. All the safeguards and the jurisprudential values of criminal law, are intended to prevent any failure of justice. The principles which come into play while deciding an appeal from acquittal could be summarised as :

(i) Appreciation of evidence is the core element of a criminal trial and such appreciation must be comprehensive — inclusive of all evidence, oral or documentary;
(ii) Partial or selective appreciation of evidence may result in a miscarriage of justice and is in itself a ground of challenge;

(iii) If the court, after appreciation of evidence, finds that two views are possible, the one in favour of the accused shall ordinarily be followed;

(iv) If the view of the trial court is a legally plausible view, mere possibility of a contrary view shall not justify the reversal of acquittal;

(v) If the appellate court is inclined to reverse the acquittal in appeal on a reappreciation of evidence, it must specifically address all the reasons given by the trial court for acquittal and must cover all the facts;

(vi) In a case of reversal from acquittal to conviction, the appellate court must demonstrate an illegality, perversity or error of law or fact in the decision of the trial court."...

17. In the sum and substance, the approach of the learned lower appellate Court and conclusion of acquittal cannot be said to be illegal or perverse in light of the foregoing discussion and the legal principles laid down in the aforementioned cases. This Court is of the considered view that the findings and conclusion of acquittal of learned lower appellate court do not warrant any interference.

18. Accordingly, the appeal, being devoid of merit, is hereby **dismissed.**

(RAJENDRA KUMAR VANI)
JUDGE

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